

impugned speech in this case is seditious. The application is accordingly dismissed.

After considering Defence final submission, I find the Accused has failed to raise any reasonable doubt in the Prosecution case. I therefore find the Accused guilty of the charge.

On sentence, I have given anxious consideration to the various extenuating circumstances found in this case. Although sedition is a serious offence, I take into consideration that the Accused is a first offender, and the type of sedition committed is a technical one under paragraph (f) of section 3(1). Further, there are extenuating circumstances in this case which are in Accused's favour. Although the Accused is a lawyer and a Member of Parliament who should be presumed to know the law, it is clear from the *Malaysian Hansards* that when the Accused made the impugned speech, even the Speaker, from his interjection when Mr. Pathmanaban took objection, was understandably unsure whether to stop or allow the Accused to continue with his speech. The law of sedition in this country is difficult to understand due to its artificial nature, and until recently even a Member of Parliament could not be expected to know why his freedom of speech has been validly limited although sections 3 and 8 of the Houses of Parliament (Privileges and Powers) Ordinance 1952 have not been expressly repealed. Secondly, this offence was committed in 1978 and the Accused was only charged in 1981 after the Deputy Public Prosecutor had given his consent to prosecute some 2 years and 9 months after a police report was lodged by the complainant. Thirdly, this is the first case in this country that a Member of Parliament has been charged of committing the offence while discharging his duty in Parliament. Fourthly, the impugned speech was Accused's maiden speech in Parliament. In my view, the fact that the Accused has been found guilty in this case, is sufficient deterrent for him and other Members of Parliament to be more careful in future when giving speeches in Parliament, particularly when dealing with sensitive issues. To my mind, public interest would be sufficiently served if the Accused is put on a Bond for two years in the sum of \$2,000 in one surety to be of good behaviour under section 173A Criminal Procedure Code without recording a conviction. I therefore impose the sentence which I think is fair and adequate having regard to all the circumstances of the case. However, this sentence should not form a precedent for future cases

A involving Members of Parliament who are found guilty of similar offences.

*Order accordingly.*

Solicitors: *Marina Yusoff & Co.*

B

## TAN BOON BAK & SONS LTD. v. GOVERNMENT OF THE STATE OF PERAK & ANOR.

[O.C.J. (Ajaib Singh J.) July 20, 1982]

[Ipoh – Civil Suit No. 368 of 1981]

C

*Land Acquisition – Delay in payment – Whether null and void – Whether land acquired for bona fide purpose – Federal Constitution, art. 13 – Land Acquisition Act 1960, ss. 3, 4, 22, 29(1) & 68.*

D

The plaintiffs in this case sued the State Government and the Collector of Land Revenue in respect of acquisition proceedings over their land of about 22,000 sq. ft. with two single storey detached houses along Lorong Anderson. The plaintiffs sought for a declaration that the acquisition proceedings were null and void and of no effect on two grounds: (1) that the acquisition of the land was not *bona fide* for a public purpose and (2) that the unreasonable delay on the part of the Collector in making the payment for the compensation awarded by him contravened section 29(1) of the Land Acquisition Act 1960 and art. 13 of the Federal Constitution.

E

F

G

The facts revealed that the Collector made an award of \$85,841 as compensation for the plaintiffs' land. The formal notice of the award and offer of compensation was duly served on the plaintiffs on March 22, 1974. They signed a written acceptance of the compensation on March 29, 1974 with a request that the award be sent to them by cheque. By a letter dated May 23, 1981 the Collector requested the plaintiffs to call at his office to collect the sum of \$85,841 and by notice dated May 27, 1981 he took formal possession of the land under section 22 of the Land Acquisition Act, 1960. This notice was served on the plaintiffs on July 16, 1981 and from that date the ownership of the land was as good as passed to the State Authority. The formality of making a memorial on the register document of title that the land has been acquired and has vested in the State Authority was all that remained to be done. The plaintiffs refused to accept the money.

H

**Held**, dismissing the plaintiffs' claim: (1) there was no evidence whatsoever that the defendants had not acted in good faith in the matter, the project was for a public purpose as well as for a commercial purpose within the meaning of section 3(a) & (c) of the Land Acquisition Act, 1960;

I

(2) in all the circumstances of the case the delay did not render the acquisition proceedings null and void;

(3) until the Collector takes possession of the land under section 22 of the Land Acquisition Act the land does not vest in the State Authority but remains the property of the land owner. In the present case the plaintiffs did in fact receive rents from the 2 houses and were still receiving them although their right thereto had been extinguished;

(4) art. 13 of the Federal Constitution has not been contravened in any way. The land was acquired in accordance with the law under Land Acquisition Act 1960 and the value of the land acquired was assessed by the Collector on the market value as at the date of the gazette notification i.e. July 5, 1973 and on that basis the award of \$85,841 was made.

(5) under sections 37 & 38 of the said Act the plaintiffs could have made objection to the amount of the compensation awarded but the plaintiffs did not do so. By bringing the present suit the plaintiffs were in effect seeking compensation based on the market value of their land as at May 23, 1981 when the Collector wrote to them to collect the award. The plaintiffs had valued the land at half a million dollars but they were entitled to no more than the sum awarded to them by the Collector.

Case referred to:-

- (1) *Pow Hing & Anor. v. The Registrar of Titles, Malacca* [1981] 1 M.L.J. 155.

## CIVIL SUIT.

*N. Selvarajah* for the plaintiffs.

*Haidar bin Mohamed Noor* (Senior Federal Counsel) for the defendants.

*Ali Noordin* watching brief for SEDC Perak.  
*Cur. Adv. Vult.*

**Ajaib Singh J.:** The plaintiffs in this case have sued the State Government and the Collector of Land Revenue in respect of acquisition proceedings over their land of about 22,000 square feet with two single-storey detached houses thereon along Lorong Anderson. They seek a declaration that the acquisition proceedings are null and void and of no effect on two grounds. First that the acquisition of the land was not *bona fide* for a public purpose and secondly that the unreasonable delay on the part of the Collector in making the payment for the compensation awarded by him contravened section 29(1) of the Land Acquisition Act 1960 and Article 13 of the Federal Constitution. These provisions read as follows:-

Section 29(1) After a notice of award in Form H has been served in the manner prescribed by section 53 upon all interested persons the Collector shall, as soon as may be, make payment of each amount awarded to the person entitled thereto.

Article 13(1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

In 1972 the Government decided to proceed with the development of a large tract of land along

**A** Jalan Anderson as an integrated suburb and to implement the project a sub-committee was formed with the Menteri Besar as the Chairman. At a meeting held on October 11, 1972 the committee considered a site plan of the project prepared by the Director of the Town and Country Planning Department. The proposed project consisted of blocks of flats, office buildings, an eight-storey hotel, a petrol station, a bank and a supermarket. The cost of the project was estimated at \$19.3 million and the land area was 28.8 acres of which 7.6 acres was private land and had to be acquired. The sub-committee eventually decided at the meeting that the project be handed over to the State Development Corporation Perak (SEDC) for management and development. The SEDC was to get advice if necessary from consultants for implementing the project and for the acquisition of the private land the SEDC was to get in touch with the Director of Lands and Mines.

**B** On July 5, 1973 a preliminary notice that the land in question was likely to be acquired for an integrated town development project was gazetted under section 4 of the Land Acquisition Act and on December 20, 1973 a declaration of intended acquisition of the land for a commercial complex was gazetted under section 8 of the Act. The purpose for the acquisition of the land was somewhat changed but this was well within the provision of the Land Acquisition Act. Together with the plaintiffs' land the other private land in the 7.6 acres belonging to some fifteen owners was also gazetted for acquisition. The Collector then commenced proceedings for the acquisition of the plaintiffs' land and after due inquiry he made an award on March 14, 1974 in the sum of \$85,841 as compensation for the land acquired. The formal notice of the award and offer of compensation was duly served on the plaintiffs on March 22, 1974. There is provision in the Act to have the matter referred to the High Court if a land-owner is dissatisfied with the amount of compensation awarded to him but this course was not pursued by the plaintiffs. They appeared to be satisfied with the sum of compensation offered to them and they signed a written acceptance of the compensation on March 29, 1974 with a request that the amount awarded be sent to them by cheque.

**C** On December 29, 1980 the SEDC entered into an agreement with R Holdings Sdn. Bhd. to develop the land on a joint venture basis the share of profits being 70:30 in favour of R Holdings.

Several years passed from the date of the award before the Collector contacted the plaintiffs again.

By letter dated May 23, 1981 he requested the plaintiffs to call at his office to collect the sum of \$85,841 and by notice dated May 27, 1981 he took formal possession of the land under section 22 of the Act. This notice was served on the plaintiffs on July 16, 1981 and from that date the ownership of the land was as good as passed to the State Authority. The formality of making a memorial on the register document of title that the land has been acquired and has vested in the State Authority was all that remained to be done. The plaintiffs refused to accept the money and informed the Collector through their solicitors by letter dated July 31, 1981 that they would be filing proceedings in the High Court to declare the acquisition proceedings null and void.

The award of the Collector is a final determination in land acquisition proceedings for it is provided in section 68 of the Land Acquisition Act that no suit shall be brought to set aside the Collector's award. A reference to the High Court is limited to the determination of the measurement of the land, the amount of compensation, the persons to whom it is payable and the apportionment of the compensation. The High Court cannot set aside the Collector's award on a reference.

Notwithstanding section 68 of the Land Acquisition Act the High Court has the power to quash land acquisition proceedings by way of certiorari if it can be shown that the Collector or the State Authority acted without or in excess of jurisdiction or that the rules of natural justice were not followed. A writ will also lie if the provisions of the Land Acquisition Act have been abused or have not been complied with strictly. Also if the acquisition proceedings in any way contravene the Federal Constitution.

After giving due consideration to the evidence adduced and the submissions which learned counsel have made on behalf of the parties I have come to the conclusion that the plaintiffs cannot succeed in their claim against the State Government and the Collector of Land Revenue. The two gazette notifications in respect of the land came within the purposes stated in section 3 of the Land Acquisition Act 1960. Section 3 states that the State Authority may acquire any land which is needed —

- (a) for any public purpose;
- (b) by any person or corporation undertaking a work which in the opinion of the State Authority is of public utility; or
- (c) for the purpose of mining or for residential, agricultural, commercial or industrial purposes.

A In the second gazette notification there was a change in the purpose stated therein but this was quite lawful and did not infringe section 3 of the Act as the land was intended to be used for a commercial complex within section 3(c) of the Act.

B The agreement between the SEDC and R Holdings states that the land is to be converted and subdivided for the development of an integrated township. The gazette notifications also refer to an integrated township and for commercial purposes. Under Phase I of the project there will be 128 units of four-storey shop houses, 17 units of double-storey shop houses and 13 units of double-storey terrace houses. Phase II has a cinema and a commercial complex. R Holdings are to provide also for the infrastructure, car parks, eating stalls and lock-up shops in the area. It will be seen therefore that the project is for a public purpose as well as for a commercial purpose within the meaning of section 3(a) and (c) of the Land Acquisition Act. And there is no evidence whatsoever that the Collector or the State Authority or the SEDC had not acted in good faith in this matter.

E Another grouse of the plaintiffs is that a private developer namely R Holdings would be benefitting from the project by getting a 70 per cent share of the profits. They say that the SEDC has had a raw deal and that the SEDC should have developed the land themselves. But this surely cannot be a legitimate complaint even if the allegations therein are true in the light of the government's new economic policy for bumiputra participation in business and in the socio-economic field.

G The SEDC had at first approached the Urban Development Authority for assistance and then gone about trying to get bumiputra business establishments for a joint venture project. Finally they managed to sign up with R Holdings which is a wholly owned bumiputra company. I find on the evidence before me that the defendants as well as the SEDC acted *bona fide* in implementing government policy. In furtherance of this policy that the agreement by the SEDC with R Holdings provides that 45 per cent of the four-storey shop houses and 85 per cent of the two-storey shop houses and two-storey terrace houses shall be sold to bumiputras.

I

Now to deal with the delay on the part of the Collector in making payment of the compensation awarded. Section 29(1) of the Land Acquisition Act states *inter alia* that the Collector shall as soon as may be make payment of the amount of the

award to the person entitled thereto. In the case of *Pow Hing & Anor. v. The Registrar of Titles, Malacca*<sup>(1)</sup> – the Federal Court had occasion to deal with these same words which appear in section 130(1) of the National Land Code as follows –

130(1) As soon as may be after the making of an order under section 100 or 129 with respect to any land (that is to say, an order declaring the land forfeit to the State Authority for non-payment of rent or the breach of any condition), the Collector shall publish in the Gazette a notification of forfeiture in Form 8A; and upon such publication, the forfeiture shall take effect as mentioned in section 131.

In delivering the judgment of the Federal Court in *Pow Hing's case* Abdoolcader J. observed that a notification of forfeiture gazetted seven months after the Collector makes his order under section 100 “can hardly be said to be as soon as may be after the making of an order under section 100 without stretching that requirement well beyond any conceivable latitude that can be properly given in the circumstances.” The Federal Court did not however decide on the validity or otherwise of the Collector’s order under section 100 of the National Land Code as this point was not really in issue in the case.

I think the words “as soon as may be” which appear in a statute should be read as meaning that any person who is required to do something should do it as soon as he is in a position or is able to do so. How soon would this be must depend on the nature of the act to be done and on all the surrounding circumstances. Also if there are good and valid reasons for the delay. Thus in some cases a week’s delay might be considered unreasonably long while in some other cases a delay of even several years might not be so. In *Pow Hing's case* it was a simple administrative act of publishing a notice in the gazette which the Collector had all to do and so the delay of seven months was certainly inexcusable.

The position in the present case before me is somewhat different. The sum awarded by the Collector had to come not from the Collector’s own funds but from the SEDC and to get the money the Collector had sent a few reminders to the SEDC. Giving his reasons for the delay in providing the money the general manager of the SEDC said that during the relevant years the SEDC was in the process of reorganisation and they also had a number of priority projects on hand. I accept the evidence of the general manager but still the delay of seven years is definitely inordinate and the question to be decided now is whether this delay ren-

ders the acquisition proceedings a nullity. I have given considerable thought to this question and would say that in all the circumstances of this case the delay does not render the acquisition proceedings null and void.

There is another reason why the land acquisition proceedings should not be declared null and void inspite of the delay. Until the Collector takes possession of the land under section 22 of the Land Acquisition Act the land does not vest in the State Authority but remains the property of the landowners. Once the preliminary notice is gazetted under section 4 of the Act the right of the land-owner is affected to some extent for he may not transfer or otherwise deal with the land but his right to possess the land and to enjoy its benefits and profits is not affected until formal possession is taken by the Collector. In the present case the plaintiffs did in fact receive rents from the two houses and are still receiving them although their right thereto has been extinguished.

Article 13 of the Federal Constitution has not been contravened in any way. The land was acquired in accordance with the law as prescribed under the Land Acquisition Act 1960 which provides also for adequate compensation. In accordance with the provisions of the first schedule in the Land Acquisition Act the value of the land acquired is assessed by the Collector on the market value as at the date of the gazette notification under section 4 of the Act which in this case was July 5, 1973 and on that basis the Collector awarded the sum of \$85,841 to the plaintiffs. Under sections 37 and 38 of the Act the plaintiffs could have made objection to the amount of the compensation awarded and have the matter referred to the High Court but the plaintiffs did not do so. By bringing the present suit the plaintiffs are in effect seeking compensation based on the market value of their land as at May 23, 1981 when the Collector wrote to them to collect the award. The plaintiffs’ valuer has valued the land at over half a million dollars but I am afraid the plaintiffs are entitled to no more than the sum awarded to them by the Collector.

The plaintiffs’ suit is dismissed with costs.

*Claim dismissed.*

Solicitors: *Lewis & Co.; Maxwell, Kenion, Cowdy & Jones*